

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R. No. 103 of 2005.

Date of decision: 28.12.2005.

Sant Ram and others

... Petitioners

Versus

Mansa Ram and others

... Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?¹ Yes.

For the petitioners : Kanwar Bhupinder Singh, Advocate.

For the respondents: Mr. Abhishek vice Mr. Ashok K. Sood, Advocate,
for respondents No. 1 to 4.

Mr. Mohinder Gautam, Advocate, for respondent
No. 5.

V.M. Jain, J. (Oral):

This revision petition under Section 115 C.P.C. has been filed by the defendants against the order dated 4.7.2005 passed by the learned trial Court striking of the defence of defendants No. 2 to 5 and dismissing the application filed by these defendants for taking written statement on record.

The learned counsel appearing for the petitioners, at the outset, submitted before me that the present petition under Section 115 C.P.C. is not maintainable and that the present petition may be treated as a petition under Article 227 of the Constitution of India.

¹Whether reporters of Local Papers may be allowed to see the judgment?

After hearing the learned counsel and perusing the record and keeping in view the facts and circumstances of the present case, the oral prayer made by the learned counsel appearing for the petitioners is allowed and it is directed that the present petition under Section 115 C.P.C. shall be treated as a petition under Article 227 of the Constitution of India.

The facts which are relevant for the decision of the present petition are that plaintiffs Mansa Ram etc. had filed a suit for declaration and injunction etc. against the defendants. In the said suit, defendant No.1 Mansa Ram was duly served, while the other defendants i.e. defendants No. 2 to 5 were not served and the case was listed for the service of defendants No. 2 to 5. On 24.4.2003, no one came present on behalf of defendant No.1 and as such, he was proceeded against ex parte, whereas defendants No. 2 to 5 were represented by their counsel. The learned trial Court, vide order dated 24.4.2003, after proceeding ex parte against defendant No.1, adjourned the case to 17.5.2003 for filing written statement on behalf of defendants No. 2 to 5. On 17.5.2003, the Presiding Officer was not holding the Court and the case was fixed for proper order. On 6.6.2003, the case was taken up by the learned trial Court and on the request made by the learned counsel for defendants No. 2 to 5, the case was adjourned to 7.7.2003 for filing the written statement on their behalf. On 7.7.2003, the learned counsel for defendants No. 2 to 5 was ready to file the written statement on their behalf in the trial Court, but the same was objected by the learned counsel for the plaintiffs on the ground that ninety days had already elapsed and the defence of defendants No. 2 to 5 be struck off. Thereupon, the learned counsel for defendants No. 2 to 5 filed an application for enlargement of time for

filing written statement. The plaintiffs filed reply to the said application. Thereupon, the learned trial Court, after hearing both sides, dismissed the aforesaid application filed on behalf of defendants No. 2 to 5 and ordered the striking of the defence of defendants No. 2 to 5 on the ground that they had failed to file the written statement within the stipulated time, vide order dated 4.7.2005. Aggrieved against the same, defendants No. 2 to 5 filed the present petition in this Court.

The learned counsel appearing for the petitioners submitted before me that in the present case, the learned trial Court had allowed defendants No. 2 to 5 to file written statement on 7.7.2003 and when these defendants wanted to file written statement on 7.7.2003, they were not allowed to do so and when these defendants filed an application for extension of time, the same was dismissed by the learned trial Court on the ground that the Court could not extend the time for filing the written statement. It has been submitted that the order passed by the learned trial Court is contrary to the law laid down by the Hon'ble Supreme Court, in the case **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, JT 2005 (6) SC 486.**

After hearing the learned counsel and perusing the record and keeping in view the facts and circumstances of the present case, in my opinion, there is force in these submissions of the learned counsel appearing for the petitioners. As referred to above, on 24.4.2003, after defendant No.1 was proceeded ex parte, the learned trial Court had adjourned the case to 17.5.2003 for filing the written statement on behalf of defendants No. 2 to 5. Since the Presiding Officer was not holding the Court on 17.5.2003, the case was adjourned for proper order and was taken up for hearing on 6.6.2003. After noticing that written statement on

behalf of defendants No. 2 to 5 had not been filed, the learned trial Court, vide order dated 6.6.2003, allowed these defendants to file the written statement on 7.7.2003. It is not disputed before me that on 7.7.2003, the learned counsel for defendants No. 2 to 5 wanted to file the written statement on behalf of these defendants, but on the objection raised by the counsel for the plaintiffs, the learned trial Court did not take the written statement on record, whereupon the learned counsel appearing for the defendants No. 2 to 5 filed an application, on 7.7.2003 itself, requesting for extension of time for filing the written statement and the said application was opposed on behalf of the plaintiffs and was ultimately dismissed by the learned trial Court and the defence of defendants No. 2 to 5 was struck off. As referred to above, the learned trial Court, vide orders dated 24.4.2003 and 6.6.2003, had allowed defendants No. 2 to 5 to file written statement and the next date fixed was 7.7.2003, on which date, defendants No. 2 to 5 wanted to file the written statement, but were not allowed to do so by the trial Court on the objection raised by the counsel for the plaintiffs. Nothing has come on the record to show that the plaintiffs had challenged the orders dated 24.4.2003 and 6.6.2003 passed by the trial Court, vide which the learned trial Court had allowed defendants No. 2 to 5 to file the written statement and the last date fixed for filing the written statement was 7.7.2003. Once the trial Court had allowed these defendants to file the written statement on 7.7.2003, in my opinion, no case was made out for the trial Court to take a different view and to strike off the defence of these defendants, even when these defendants wanted to file the written statement in the Court on 7.7.2003 and had even filed an application for extension of time for filing the written statement.

The view taken by the learned trial Court that the written statement could be filed only within ninety days of the service and there was no provision for extension of time to file the written statement, in my opinion, is contrary to the law laid down by the Hon'ble Supreme Court, in **JT 2005 (6) SC 486** (supra). In the said authority it was held by the Hon'ble Supreme Court that the Court in its discretion would have power to allow the defendant to file written statement even after the expiry of the period of ninety days provided in Order 8 Rule 1 C.P.C. and that the Court has wide powers to make such order in relation to the suit as it thinks fit and the provisions of Order 8 Rule 1 C.P.C. providing for upper limit of ninety days to file the written statement is directory. However, it was made clear that the order extending time to file written statement could not be made in routine and the time can be extended in exceptionally hard cases and that the discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1 C.P.C. It was further held in the said authority that the rules of procedure are made to advance the cause of justice and not to defeat it and that the in the present context, strict interpretation to Order 8 Rule 1 C.P.C. would defeat justice. Similar view was taken by the Hon'ble Supreme Court, in **Smt. Rani Kusum Vs. Smt. Kanchan Devi and others, AIR 2005 Supreme Court 3304**.

Keeping in view the law laid down the Hon'ble Supreme Court, in the aforementioned authorities and taking into consideration the facts and circumstances of the present case, especially the fact that the trial Court itself had allowed defendants No. 2 to 5 to file the written statement initially on 17.5.2003 and later on 7.7.2003, the trial Court

could not have ordered the striking of the defence of defendants No. 2 to 5 and/or to dismiss the application filed by these defendants for extension of time, especially when these defendants were ready with the written statement on 7.7.2003 and wanted to file the same in the Court on that day. As referred to above, the plaintiffs had not challenged the orders dated 24.4.2003 and 6.6.2003 passed by the trial court, vide which defendants No. 2 to 5 were allowed to file written statement on 17.5.2003 and 7.7.2003 respectively.

For the reasons recorded above, the present petition is allowed, the order dated 4.7.2005 passed by the trial Court is set aside and the defendants – petitioners are allowed to file the written statement with no order as to costs.

Parties through their counsel are directed to appear before the learned trial Court on **20th January, 2006**, for further proceedings in accordance with law, on which date, the learned trial Court shall fix a date for filing the written statement on behalf of defendants No. 2 to 5.

CMP No. 133 of 2005:

In view of the orders passed in the main petition, the stay order dated 12.8.2005, shall stand vacated and the application stands disposed of.

**December 28, 2005
(BSS)**

**(V.M. Jain),
Judge**

